REMARKS

The Present Invention

The present invention is directed to a composition comprising recombinant adenoviral vectors and a pharmaceutically acceptable carrier, wherein each recombinant adenoviral vector is deficient in one or more essential gene functions of one or more regions of the adenoviral genome selected from the group consisting of the E1, E2A, and E4 regions of the adenoviral genome, and wherein the composition does not contain replication-competent adenoviruses.

The Pending Claims

Claims 36-55 are pending and are directed to the composition.

The Claim Amendments

Claim 36 has been amended to delete the term "pharmaceutical," as suggested by the Office Action. Claims 37-55 have been amended to contain proper antecedent basis by referring to "each adenoviral vector" rather than "the adenoviral vector." Accordingly, no new matter has been added by way of these amendments.

The Office Action

The Office Action raises the following concerns:

(a) claims 46-55 are objected to for allegedly containing language that is inconsistent with that of claims 36-45,

(b) claims 36-55 are rejected under 35 U.S.C. § 112, first paragraph, for alleged lack of enablement,

(c) claims 36-55 are rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-31 and 49-62 of U.S. Patent 5,851,806, and over claims 1-24 of U.S. Patent 5,994,106, and

(d) claims 36-55 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 66-78 of copending U.S. Application No. 09/321,797, and claims 36-38, 49, 51-54, 68-70, 72-76, 90, 91, 93-100, and 102-114 of copending U.S. Application No. 09/261,922.

Reconsideration of these rejections and objection is hereby requested.

Discussion of Objection to the Claims

The Office Action objects to claims 46-55 for reciting the phrase "*the* adenoviral vector." In particular, the Office Action alleges that this phrase is inconsistent with the language of the claims from which claims 46-55 depend (i.e., claims 36-45, respectively), which recite a composition of adenoviral *vectors.* Applicants note that claims 37-45 also contain the allegedly inconsistent phrase. As such, claims 37-55 have been amended to refer to "*each* adenoviral vector," which is consistent with the language recited in claim 36. Accordingly, Applicants respectfully request withdrawal of the objection to the claims.

Discussion of Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 36-55 have been rejected under Section 112, first paragraph, for alleged lack of enablement. In particular, the Office Action contends that the specification does not enable all possible therapeutic applications of the claimed composition implied by the term "pharmaceutical." In an effort to advance prosecution of the subject application, and not in acquiescence of the rejection, claim 36 has been amended to delete the term "pharmaceutical," as recommended by the Office Action. Therefore, the Section 112, first paragraph, rejection is rendered moot by these amendments and should be withdrawn.

Discussion of Obvious-Type Double Patenting Rejection

Claims 36-55 have been rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-31 and 49-62 of U.S. Patent 5,851,806, and over claims 1-24 of U.S. Patent 5,994,106. The Office Action has provisionally rejected claims 36-55 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 66-78 of copending U.S. Application No. 09/321,797. As noted by the Office Action, the '797 application has matured into U.S. Patent 6,482,616. As such, the rejection will be addressed as a non-provisional obviousness-type double patenting rejection.

To advance prosecution of the present application, Applicants submit herewith terminal disclaimers in view of the '806 patent, the '106 patent, and the '616 patent. Accordingly, the obviousness-type double patenting rejections over the '806 patent, the '106 patent, and the '616 patent should be withdrawn.

Discussion of Provisional Obvious-Type Double Patenting Rejection

Claims 36-55 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over

claims 36-38, 49, 51-54, 68-70, 72-76, 90, 91, 93-100, and 102-114 of copending U.S. Application No. 09/261,922. Due to the *provisional* nature of this rejection, Applicants will address the rejection at which time the application issues and the rejection becomes non-provisional.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned agent.

Respectfully submitted,

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